UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SPRINGFIELD TERMINAL RAILWAY CO.,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civ. No. 98-92-B
	)	
S.F. MADDEN, INC.,	)	
	)	
Defendant	)	

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

In this diversity suit arising out of a two-vehicle collision, Plaintiff Springfield Terminal Railway Co. ("Plaintiff") seeks damages based on the alleged negligence of Defendant S.F. Madden, Inc. ("Defendant") in the maintenance and operation of its vehicle (Count I). Plaintiff also seeks punitive damages (Count II). Defendant, in turn, has filed a counterclaim seeking damages based on Plaintiff's alleged negligence. Before the Court is Defendant's Motion for Summary Judgment on Count II of Plaintiff's Complaint. For the reasons stated below, Defendant's Motion is GRANTED.

I. SUMMARY JUDGMENT

Summary judgment is appropriate in the absence of a genuine issue as to any material fact and when the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is genuine for these purposes if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A material fact is one that has "the potential to affect the outcome of the suit under the applicable law." Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Facts may be

drawn from "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affadavits." Fed.R.Civ.P. 56(c). For the purposes of summary judgment the Court views the record in the light most favorable to the nonmoving party. See McCarthy v. Northwest Airlines, Inc., 56 F.3d 313, 315 (1st Cir. 1995).

II. FACTS

This action arises out of a September 18, 1997 collision between a 1995 Ford tractor-trailer operated by Defendant's employee David Boobar ("Boobar") and a railroad switch tamper operated by Plaintiff's employee Grant Ross ("Ross"). The collision occurred on Route 15 in Bucksport at a railroad crossing known as "Kennedy Crossing." Boobar was driving the tractor-trailer south on Route 15. The vehicle was fully loaded with wood chips and weighed over 100,000 pounds. Ross was operating the bright yellow, forty-foot tamper across the railroad tracks and co-worker Barry Raye ("Raye") served as the "flagger."

When Raye motioned to Ross that he could move the tamper out onto the crossing, there was no traffic coming from the Bangor direction. The tamper proceeded over the crossing at a slow rate of speed. The parties dispute what precisely occurred in the seconds before the collision. However, Boobar has testified that he failed to downshift as he approached the crossing. (Boobar Dep. at 41.) The tractor-trailer and the tamper collided at the crossing and both pieces of equipment suffered damage. At the time of impact, the front of the tamper was beyond the crossing and onto the tracks on the other side. Plaintiff alleges that after the collision, Boobar stated that he was going too fast, that he did not see the tamper, and that he put his foot on the brakes but they failed.

In a Motor Carrier Compliance Report completed after the accident, the Maine State

Police cited Defendant for twelve violations. Five of the violations implicated defective brakes (including one inoperative brake) and two of the violations involved defective tires.

Defendant requires that all of its vehicles be serviced when necessary and undergo an annual commercial vehicle inspection by an inspector certified by the Maine State Police. Defendant relies, in part, on the results of this annual inspection to learn whether any components of its vehicles require repair or replacement. On June 18, 1998, a duly certified inspector performed an annual Commercial Vehicle Inspection on the tractor-trailer in question, including an evaluation of its brakes and tires. The inspector approved all components of the tractor-trailer, including the brakes and tires, and provided Defendant with a copy of his report.

Defendant also relies on its employees to inspect and maintain its vehicles in a safe and working order, and to report to management any problems that cannot be resolved through in-house maintenance. During the three months between the annual inspection and the date of the accident, the vehicle was used regularly to haul loads and was inspected and maintained by Defendant's employees. Defendant had no reports of safety or mechanical problems with this vehicle from employees or from any other source during this time period.

Boobar was the only regular driver of the tractor-trailer since Defendant acquired it in 1995. He drove the truck an average of five days per week and 80,000 miles per year. Once every one to two days, he checked the brakes and tires on the vehicle. This routine involved getting under both the tractor and the trailer, looking at the brake components, and adjusting the brakes manually if necessary. On the day of the collision, Boobar had driven the fully loaded vehicle from Milford to the accident scene without any malfunction of the brakes.

III. DISCUSSION

In Maine, a plaintiff may recover punitive damages in a tort case only where he demonstrates by clear and convincing evidence that the defendant acted with malice. See Tuttle v. Raymond, 494 A.2d 1353, 1361-63 (Me. 1985). A showing of malice may be either express or implied:

> [t]his requirement of malice will be most obviously satisfied by a showing of 'express' or 'actual' malice. Such malice exists where the defendant's tortious conduct is motivated by ill will toward the plaintiff. . . . Punitive damages will also be available, however, where deliberate conduct by the defendant, although motivated by something other than ill will toward any particular party, is so outrageous that malice toward a person injured as a result of that conduct can be implied. We emphasize that, for the purpose of assessing punitive damages, such 'implied' or 'legal' malice will not be established by the defendant's mere reckless disregard of the circumstances.

Id. at 1361.

Plaintiff seeks punitive damages on the theory that Defendant's alleged conduct was so outrageous that malice may be implied. Plaintiff asserts the evidence indicates that Boobar was negligent or reckless in his operation of the tractor-trailer because he was driving too fast and did not notice the tamper. Plaintiff argues that Boobar's alleged negligence or recklessness was compounded by the facts that, at the time of the collision, (i) the vehicle was fully loaded with wood chips and weighed over 100,000 pounds, and (ii) the tractor-trailer was being operated with defective brakes and tires. In sum, Plaintiff contends that the combination of these circumstances creates a triable issue of fact as to whether Defendant knowingly and affirmatively created a hidden, life-threatening situation on a public roadway and thereby engaged in outrageous conduct from which malice may be implied.

Defendant counters that while the evidence may support a finding of negligence or gross

negligence, it does not support a finding of deliberate and outrageous conduct. Specifically, Defendant contends that Plaintiff cannot show that Defendant or Boobar acted deliberately. The Court agrees.

The standard enunciated in Tuttle is designed to limit punitive damages awards to cases involving malicious, rather than grossly negligent or reckless conduct. See Lehouillier, 13 F. Supp.2d at 110. The Tuttle Court explained that "[allowing] exemplary awards based upon gross negligence or mere reckless disregard of the circumstances overextends the availability of punitive damages, and dulls the potentially keen edge of the doctrine as an effective deterrent of truly reprehensible conduct." Tuttle, 494 A.2d at 1361.

In Tuttle, the Court held that no reasonable factfinder could find implied malice where the evidence indicated that the defendant was speeding in a 25 mile per hour zone when he struck the plaintiff's car, and that the defendant went through a red light immediately prior to impact. See id. at 1362. These facts, the Court concluded, permitted a finding of reckless disregard of the circumstances at a maximum. See id.

Similarly, in Kelleher v. Boise Cascade Corp., 683 F. Supp. 858 (D. Me. 1988), the Court held that the facts did not support a finding of implied malice where the defendant allegedly failed to warn the plaintiff of the dangers associated with diving in the run-off tanks at its paper mill and allegedly maintained the run-off tanks in a manner from which malice could be inferred. See Kelleher, 683 F. Supp. at 859. Plaintiff alleged the defendant knew that "the diving helmets leaked due to sediment buildup on the exhaust valve diaphragm, that the total suspended solids in the effluent treatment system exceeded the EPA limits by many times, that coliform bacteria were present in the effluent, and that Defendant did not warn Plaintiff of the potential dangers."

Id. at 860. The Court determined that these facts might support a finding of recklessness, but not a finding of implied malice. See id. at 860.

More recently, however, in Lehouillier v. East Coast Steel, Inc., 13 F. Supp.2d 109 (D. Me. 1998), the Court denied the defendant's Motion for Summary Judgment as to punitive damages because the facts alleged raised a genuine issue of material fact as to the existence of implied malice. See Lehouillier, 13 F. Supp.2d at 112. In that case, the plaintiff died when his car collided with a tractor-trailer transporting a 120-foot "I" beam on the highway. See id. at 109. Two days prior to the accident, the State of Maine had issued a permit to the defendant allowing it to transport the "I" beam with certain restrictions. See id. at 110. At the time of the accident, the defendant was violating the terms of the permit by moving the "I" beam at night and without a police escort. See id. The beam completely blocked the roadway; the beam had no lights or reflective markings attached to it; and the beam was nearly invisible in the darkness. See id. The Court distinguished the scenario from those presented in Tuttle and Kelleher and determined that a reasonable factfinder could find that the defendant, "by knowingly and affirmatively creating a hidden, life-threatening situation in the nighttime on a public roadway, in violation of the specific terms of its permit and of the law, engaged in conduct which can be properly characterized as outrageous." Id. at 112.

The Court finds the instant case clearly distinguishable from Lehouillier. While the evidence in Lehouillier permitted a finding that the defendants had "*deliberate[ly]* creat[ed] a solid steel wall completely blocking a public highway in violation of law and in circumstances such that it could not be seen in time to avoid collision," id. at 112 (emphasis added), the evidence in this case does not support a finding that the conduct of Defendant or Boobar was

deliberate in any way.

Unlike the defendants in Lehouillier, there is no evidence that either Defendant or Boobar had reason to know that the wood chip-laden tractor-trailer was a so-called "accident waiting to happen." Plaintiff has offered no evidence indicating that Defendant or Boobar knew prior to the post-accident inspection that the vehicle's brakes and tires were defective. To the contrary, the undisputed evidence indicates that an inspector certified by the Maine State Police had evaluated and approved all components of the vehicle three months prior to the accident. In addition, Defendant did not receive any reports of mechanical problems with the vehicle between the date of the inspection and the date of the accident. Finally, Boobar himself inspected the vehicle's brakes and tires once every one to two days. On the day of the accident, he drove the vehicle from Milford to the accident scene without any brake malfunctions. In sum, the record is devoid of any evidence reflecting "deliberate conduct . . . so outrageous that malice . . . can be implied" in Defendant's maintenance of, or in Boobar's operation of, the tractor-trailer. Tuttle, 494 A.2d at 1361. In the absence of facts which would support a finding of implied malice, Plaintiff's claim seeking punitive damages must fail.

IV. CONCLUSION

For the above-stated reasons, Defendant's Motion for Summary Judgment as to Count II of Plaintiff's Complaint is GRANTED.

SO ORDERED.

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MORTON A. BRODY
United States District Judge

Dated this ____ day of November, 1998.